

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

JEFF KENOL	:	DOCKET NO. 6:11-cv-0706 Section P
VS.	:	JUDGE DOHERTY
WARDEN VIATOR, ET AL.	:	MAGISTRATE JUDGE HILL

REPORT AND RECOMMENDATION

Currently before the court are a Motion for Summary Judgement and a Motion to Dismiss filed on behalf of the respondents in the above-captioned *habeas corpus* matter. [docs. 9 and 13]. This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. §636(b)(1)(B).

A petition for writ of *habeas corpus* pursuant to 28 U.S.C. § 2241 was filed by *pro se* petitioner, Jeff Kenol, on May 5, 2011, challenging his continued detention in post-removal-order custody. The petition alleges that petitioner, a citizen of Haiti, was ordered removed on September 17, 2010, and that his order of removal become final. The petition further alleges that he has remained in the custody of ICE pursuant to INA § 241 and that despite his cooperation, the ICE has been unable to remove him. Thus, petitioner claims that he has been detained beyond both the 90 day removal period and the jurisprudential presumptively reasonable six month removal period in violation of the principles established by the Supreme Court in Court in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001). Accordingly, petitioner requests that this court order his release from custody.

In response to this petition, the respondent filed a Motion for Summary Judgment, arguing that Kenol had failed to meet his burden by demonstrating that his removal to Haiti was not likely in the reasonably foreseeable future. [rec. doc. 9].

The respondent has now filed the instant Motion to Dismiss. [rec. doc. 13]. In support of this motion, the government presents documentation which establishes that the petitioner was released from post-removal-order detention pursuant to an Order of Supervision on October 17, 2011. *See* Declaration of Brian Gueringer, Govt. Ex. 1.

At the time that this petition was filed, Petitioner was in detention pursuant to the statutory authority of § 241 of the Immigration and Nationality Act (INA), codified at 8 U.S.C. § 1231, and he sought to have the court review his post-removal-order detention. However, because the petitioner is no longer in custody, his challenge to his post-removal-order detention is now moot and should be dismissed. For this reason,

IT IS RECOMMENDED that the respondent's Motion to Dismiss [doc. 13] be **GRANTED** and that this petition be **DENIED AND DISMISSED as moot**.

IT IS FURTHER RECOMMENDED that the respondent's Motion for Summary Judgment [doc. 9] be **DENIED AND DISMISSED** as moot.

Under the provisions of 28 U.S.C. § 636(b)(1)(C), the parties have fourteen (14) days from service of this Report and Recommendation to file any objections with the Clerk of Court. Timely objections will be considered by the district judge prior to a final ruling.

FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN FOURTEEN (14) DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING ON APPEAL, EXCEPT UPON GROUNDS OF PLAIN ERROR, THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT.

THUS DONE AND SIGNED in Chambers at Lafayette, Louisiana, November 4, 2011.


C. MICHAEL HILL
UNITED STATES MAGISTRATE JUDGE